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In the

Supreme Court of the United States

No. 637

UNITED STATES OF AMERICA,
Respondent

v.

WILLIAM LAWRENCE LEMONS
AND GRADY INGRAM,
Petitioners

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The defendants, William Lawrence Lemons and Grady Ingram, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

On December 16, 1961, the petitioners were adjudged guilty of a charge of conspiracy under Title 18, Section 371, to violate Sections 7206(4); 5204(a)(2); 5604(a)(1) of Title 26 of the United States Code, and were sentenced to the custody of the Attorney General of the United States. From this judgment of conviction the petitioners appealed

to the United States Court of Appeals for the Fourth Circuit. The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was entered on October 5, 1962, upholding the decision of the United States District Court for the Middle District of North Carolina at Greensboro.

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit was entered on October 5, 1962. The statutory basis for attempting to invoke the jurisdiction of this court is Title 28, Section 1254, United States Code.

QUESTIONS PRESENTED

The questions presented are:

1. Whether or not the decision of the United States Court of Appeals upholding the decision of the District Court deprived the petitioners of their constitutional rights and;

2. Whether or not there was sufficient evidence for the petitioners to have been convicted in the United States District Court, which conviction was upheld by the Court of Appeals.

REASONS FOR GRANTING THE WRIT

The judgment of the Court of Appeals upholding the judgment of the District Court is based upon a misconstruction of the evidence introduced in the District Court; and erroneous and unwarranted inferences drawn from the evidence. The Court's Opinion of October 5, 1962, at page 2 states that "The evidence also discloses that a number of

vehicles were to use the vernacular, 'souped up' for their use in the illegal activities of the conspirators." Among other details, Cadillac and Lincoln engines had been installed in Fords or other cars of comparable weight, as well as built-up springs, lifting blocks, and cut-off switches which permitted the driver to cut off the tail lights independently of the front lights of the vehicle, thereby flusterating any police officers who might be in pursuit. On page 3 of its opinion the Court then recites that the Defendant Lemons was in the business of service and repairing of motor vehicles and that he had "a widespread reputation for his ability to install high-speed motors, heavy duty springs and cut-off switches on motor vehicles." This recitation of the evidence is erroneous and infers that the defendant Lemons was in the business of installing "souped-up" motors, etc., on vehicles for use by the other conspirators in this case. The evidence of the government failed completely to show that the defendant Lemons in any manner did any work of such a nature upon vehicles owned or operated by the other conspirators, the only evidence being Lemons' denial that he had done such work. There was no admission by Lemons that he had a "widespread reputation for his ability to install high-speed motors, heavy duty springs and cut-off switches on motor vehicles."

The Court on page 4 of its opinion states that "Prospective customers for contraband whiskey were advised that they could contact the defendants by calling Lemons' garage." The transcript of the evidence at page 13 and page 21 disclosed that one of the defendants told a prospective customer that he would be at Lemons' garage at 4:00 o'clock on a specific day and that he could be reached by telephone at that time on that date by calling Lemons' garage. This evidence does not permit the inference drawn by the Court

of Appeals. There was no testimony that any "defendants" could be contacted there, merely that one defendant could be contacted there at a specific time and date.

The Court states at page 6 of its opinion "On this evidence the jury was justified in finding that Lemons' activities went far beyond the mere rendering of innocent services to the other conspirators." The evidence to support this assertion is that Lemons purchased a 1955 Mercury automobile and that subsequently other defendants on numerous occasions operated the Mercury automobile.

The defendant testified in explanation of this use by other defendants that he had sold the vehicle to one of the defendants. The evidence did not show that this vehicle was ever used for the transportation of any illegal whiskey or for any other illegal use.

That Lemons towed a 1959 Ford automobile away from Yanceyville, North Carolina, to a garage in Draper, North Carolina. This vehicle theretofore had been driven by another defendant when he attempted to evade officers who sought to arrest him for a previous liquor violation. A Cadillac motor, heavy duty springs and other unusual equipment was found to have been installed in this vehicle.

The evidence established that as a part of his lawful business activities, Lemons towed disabled vehicles into his place of business and repaired them. No evidence was introduced which in any way connected Lemons with the installation of the Cadillac motor in this vehicle, or the installation of any other unusual equipment on this vehicle. The only evidence on this point being that he denied installing any of the unusual equipment on the vehicle.

That Lemons introduced another defendant to an insurance agent who issued insurance upon a truck which truck was later used to transport illegal whiskey.

The evidence further established that Lemons was well acquainted with the Insurance Agent, that the Insurance Agent recommended business to Lemons and that Lemons recommended business to the Insurance Agent. There was no evidence that Lemons knew of or was in any way connected with the subsequent illegal use to which the vehicle was put.

That a number of the other defendants, on frequent occasions, were seen around Lemons' garage; that certain other defendants made telephone calls to and from Lemons' garage and that on a number of occasions vehicles connected with other defendants were parked at Lemons' garage.

Evidence also established that Lemons was the owner and operator of the largest garage in Draper, North Carolina. He was in the business of repairing automobiles and trucks. He did a large part of the physical labor involved and was reputedly the best mechanic in the area and worked long hours in the garage. During the course of his business he repaired automobiles for anyone who brought the vehicle to him, including agents of the Alcohol and Tobacco Tax Division, the Federal Bureau of Investigation and various other Police Officials. No evidence was introduced showing that he put any unusual equipment upon the vehicles connected to the other defendants in this case. The major portion of his business some 70% or 80% over the last two years, consisted of repairing and keeping operating vehicles of two large legitimate business establishments in and around Draper, North Carolina. The telephone used by some of the defendants was a coin-operated public telephone and the defendant's place of business was open to the public.

The Government's theory as to Lemons and the evidence, if it does anything, places Lemons in the same category of a person being in a legitimate business supplying materials

such as sugar to persons with knowledge that the sugar would be used illegally.

In order for the evidence to be sufficient to uphold the conviction of Lemons, the Government had to show beyond a reasonable doubt that he knew of the existence of the conspiracy and that he acted with this knowledge in aid of the conspiracy. *Call* v. *U. S.* (4th Cir.), 265 F. 2d 167. The *Call* case recognizing the rule enunciated in *U. S.* v. *Falcone*, 109 F. 2d 579. In the *Falcone* case, the Falcone brothers and the Noles brothers sold large quantities of sugar, yeast, and five-gallon cans to manufacturers of illegal whiskey. These sales were made with knowledge that the purchaser would use the goods in the manufacture of illegal whiskey. One of the Noles brothers hid behind the name of a cousin and caused the cousin to swear falsely that he was doing the business of the Acme Yeast Company. The decision, in an opinion by Judge Learned Hand held that sellers of goods not themselves innocent, do not become a conspirator because the seller knows that the buyer means to use the goods to commit a crime. "It is not enough (to convict) that he does not forego a normally lawful activity of the fruits of which he knows that others will make an unlawful use, he must in some sense promote the venture himself, make it his own, have a stake in its outcome."

Here, while it was the Government's theory as before stated that Lemons fixed automobiles to be used as "liquor cars," no evidence was ever introduced showing that he placed any unusual equipment on the vehicles used by other defendants. Also, while it was another part of the Government's theory that Lemons furnished automobiles for use by the other defendants, no evidence was introduced that he did furnish cars with the exception of the 1955 Mercury which was never used to transport illegal whiskey. This is

a classic example to the danger inherent in a conspiracy prosecution. This danger recognized by Judge Hand in the *Falcone* case, and by the Fourth Circuit in the *Call* case, is guilt by association. The evidence in this case shows that Lemons was a respectable businessman, pursuing his lawful business activity. His crime, if any, was that he did not discriminate as to his customers. The evidence completely failed to establish beyond a reasonable doubt that Lemons did anything other than follow his usual affairs of business. The very worst that the evidence could be said to show as to Lemons, is that he did not forego a normally lawful activity, the fruits of which he knew the other defendants would make an unlawful use.

It is respectfully submitted that the Circuit Court's opinion as to Lemons upheld a verdict based upon the "speculative possibility" that Lemons "acted with knowledge in aid of the conspiracy," *Call* v. *U. S.*, *supra*, the conviction and judgment as to Lemons should be reversed.

As to the petitioner Ingram, the evidence, with one exception, discussed hereinafter, consisted of his being seen in the presence of some of the other defendants on a number of occasions; at the home of one of the defendants on a number of occasions; in a public restaurant with two of the other defendants; in a truck and automobile with one of the other defendants; and that an automobile registered to his wife, which he drove on frequent occasions, was seen on a number of occasions at the home of another defendant; at a service station where other defendants were present and at the garage of the defendant, William Lawrence Lemons.

The other exception consisted of a conversation by Ingram with an undercover Alcohol and Tobacco Tax Agent. This conversation took place on October 16, 1960, and consisted of Ingram's conversation about the price of illegal whiskey and the offer to sell illegal whiskey or brandy to the agent.

The brandy was to be delivered by another defendant. No delivery was made. This conversation does not disclose that Ingram conspired with the other defendants named in the indictment with the possible exception of the defendant, Roy Webb. At best the conversation could be construed as evidence of a conspiracy between Ingram and Webb, which conspiracy was not carried into effect.

At page 7 of its opinion the Court states that "On another occasion he (Defendant Ingram) was observed taking a large sum of money from some of the other conspirators." It is difficult to understand this assertion. The reporter's transcript contains no testimony that the defendant Ingram was ever seen taking any money from any of the other conspirators in this case.

No evidence was ever introduced by the Government which explained the meetings between Ingram and other defendants. Unexplained meetings between Ingram and other defendants raises no inference of Ingram's guilt. *Dennert* v. *U. S.*, 147 F. (2d) 286.

At most, the Government's evidence disclosed that Ingram was acquainted with and associated with some of the other defendants. It further established that Ingram had knowledge of illegal whiskey and was perhaps involved in some manner with illegal whiskey. Such a showing falls far short of evidence establishing guilt beyond a reasonable doubt of the charge contained in the indictment. As to the charge contained in the indictment, it is respectfully submitted that the evidence created a suspicion of guilt which is not sufficient. *Moore* v. *U. S.*, 271 F. 2d 564.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted in order to protect the petitioners' individual rights and to correct the erroneous decision of the District Court and the Circuit Court which was based upon insufficient evidence.

Respectfully submitted.

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